

UT 02-2

Tax Type: Use Tax

Issue: Use Tax On Aircraft Purchase

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE,
Taxpayer**

No. 01-ST-0000

IBT# 0000-0000

Denial of Claim

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General John Alshuler on behalf of the Illinois Department of Revenue; John Doe, *pro se*.

Synopsis:

This matter is before this administrative tribunal as the result of a timely protest by John Doe (hereinafter referred to as “taxpayer”) of a Notice of Tentative Denial of Claim issued by the Illinois Department of Revenue (hereinafter the “Department”) on September 10, 2001. The taxpayer is contesting the Department’s determination that use tax was due on an aircraft kit and aircraft parts used by the taxpayer to assemble an experimental, ultralight aircraft intended for the taxpayer’s personal use. A hearing on this matter was held on March 18, 2002 at which Mr. Doe presented documentary evidence, including evidence that the use tax collected from the taxpayer exceeded the

taxpayer's use tax liability. Following a review of the record in this case, I recommend that the Notice of Tentative Denial of Claim be modified to allow a refund to the extent an overpayment of the taxpayer's actual use tax liability occurred and, as modified, be made final.

Findings of Fact:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Tentative Denial of Claim, denying the taxpayer's claim for refund for overpaid use tax in the amount of \$1,268.04. Dept. Ex. 1.
2. The taxpayer is a resident of Illinois, residing in Anywhere, Illinois; the taxpayer is employed by ABC Hospital & Medical Center. Dept. Ex. 1, 2; Taxpayer's Ex. 1, 2, 3, 4, 5, 6, 7, 8, 9.
3. During 1995, 1996 and 1997, the taxpayer purchased an aircraft kit and aircraft parts from several Illinois and out-of-state retailers. Tr. pp. 8, 9, 24, 25, 31, 37; Taxpayer's Ex. 9.
4. The aircraft kit and aircraft parts purchased by the taxpayer were used to construct an ultralight experimental aircraft (hereinafter the "aircraft"), identification number XXXXXXXX, serial # XXXXXXXX; this aircraft was registered with the Federal Aviation Administration in 1996, and Mr. Doe attempted to register this aircraft in Illinois in December, 1996. Tr. pp. 24, 25, 28, 31, 33, 34, 35, 37, 40, 41, 42; Dept. Ex. 2; Taxpayer's Ex. 5, 7, 8.
5. On April 9, 1999, the Department sent the taxpayer a letter proposing to assess use tax related to the taxpayer's aircraft in the amount of \$893 (including interest and

penalties); the Department identified the aircraft to which its letter pertained as a “XXXX XXXXXXXXX X”, number “X# XXXXXX Serial# XX-XXX”; these numbers corresponded to the numbers assigned the aircraft the taxpayer constructed, which is owned by the taxpayer. Tr. pp. 27, 28, 29, 31, 45; Dept. Ex. 2; Taxpayer’s Ex. 8.

6. The amount shown due on the April 9, 1999 letter from the Department the taxpayer received was taken from an EDA-95, Motor Vehicle Use Tax Report, which the taxpayer received and returned to the Department on April 20, 1999. Taxpayer’s Ex. 8.
7. On June 10, 1999, the Department sent the taxpayer a Notice of Demand for Documentary Evidence; although this notice was addressed to John Doe, it pertained to an aircraft identified as “N #XXXXXX; serial #XX-XXXX; aircraft registration date, 9/96”; the aircraft identified in the Department’s notice was not owned by the taxpayer, but was registered to Joe Blow, a resident of Anywhere, Illinois. Tr. pp. 15, 16; Taxpayer’s Ex. 2, 5, 7, 10.
8. On May 2, 2001, the Department sent the taxpayer a revised Notice of Demand for Documentary Evidence; this notice, which contained identification numbers properly identifying the aircraft to which the notice pertained as the aircraft owned by the taxpayer, advised the taxpayer that his failure to provide documentation showing why his aircraft was not taxable within 60 days would bar the taxpayer from contesting the tax liability determined by the Department; the taxpayer did not respond to this notice within 60 days as required by 35 ILCS 120/7 in order to avoid a conclusive presumption that the taxpayer’s aircraft was subject to use tax. Tr. pp. 28, 29; Dept. Ex. 2.

9. On March 8, 2001, the Department issued a Final Notice of Intent to Levy Assets notifying the taxpayer of its intent to commence a levy to recover the tax shown due the Department, in the amount of \$1,014.54, and demanding that this amount be paid immediately. Taxpayer's Ex. 1.
10. On March 28, 2001, Mary Lovell, an employee of the Department, sent a Notice of Levy on Wages, Salary, and Other Income, notifying the taxpayer's employer, Advocate Health Hospital Corp., of a wage levy for unpaid tax against the taxpayer in the amount of \$1,023.40. Taxpayer's Ex. 4.
11. The actual amount of wages withheld from the taxpayer's paycheck pursuant to the Department's wage levy was \$1,268.04. Taxpayer's Ex. 4.
12. The aircraft was not assembled by the taxpayer for purposes of being sold; it was built exclusively for the taxpayer's own use and is owned by the taxpayer. Tr. pp. 45, 46.
13. Parts used to construct the aircraft were delivered in Illinois and used in this state to assemble components of the aircraft; these components were transported to Florida where assembly of the aircraft was completed; the aircraft was later returned to Illinois. Tr. pp. 37, 38.

Conclusions of Law:

This case arises as the result of the imposition of use tax on the taxpayer's purchase of an aircraft kit and parts to assemble an experimental ultralight aircraft intended for the taxpayer's personal use.¹ Tr. pp. 37, 38, 45, 46. This determination by

¹ The taxpayer has objected to the Department's determination in this case on grounds that it pertains to an aircraft the taxpayer never owned. Taxpayer's Ex. 5, 7. However, the Department's initial letter to the

the Department is presumed correct. A. R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988). In order to overcome the Department's prima facie case, the taxpayer must produce competent evidence clearly identified with the taxpayer's books and records. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987); Vitale v. Department of Revenue, 118 Ill. App. 3d 210 (3rd Dist. 1983); A.R. Barnes & Co., *supra*. In this case, the taxpayer has admitted that he purchased a kit and parts to assemble an ultralight aircraft, and that part of the assembly of this aircraft using these parts took place in Illinois. Tr. pp. 8, 9, 24, 25, 31, 37. The record also indicates that, with the exception of parts purchased from XYZ Supply, Inc., an Illinois retailer, the taxpayer did not pay use tax on parts he used to assemble this aircraft. Tr. pp. 5, 9; Taxpayer's Ex. 9.

The taxpayer vigorously contends that the Department erroneously assessed use tax in this case because the imposition of use tax based upon the use an aircraft kit and parts before the aircraft was completed violated Illinois law. Tr. pp. 8, 9, 23, 29, 30, 33, 34, 36, 37, 48. Accordingly, the principal issue presented in this case is whether Illinois use tax applied to the taxpayer's use in Illinois of parts acquired outside of the state to assemble an aircraft intended for the taxpayer's personal use.

Section 3 of the Illinois Use Tax Act ("UTA"), 35 **ILCS** 105/3, provides in part as follows:

Tax imposed. A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer, including computer software, and including photographs, negatives, and positives

taxpayer, notifying him of a proposed tax, properly identified the taxpayer's aircraft. Taxpayer's Ex. 8. While subsequent correspondence from the Department related to an aircraft the taxpayer did not own (Taxpayer's Ex. 2, 3), the Department corrected this error by issuing a Notice of Demand for Documentary Evidence (Dept. Ex. 2) which properly identified the taxpayer's aircraft.

that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for commercial exhibition. (emphasis added)
35 **ILCS** 105/3

The “use” made taxable pursuant to 35 **ILCS** 105/3 is defined in section 2 of the UTA, 35 **ILCS** 105/2, which provides in part as follows:

“Use” means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for demonstration purposes (emphasis added)
35 **ILCS** 105/2

Neither the Illinois UTA, nor the regulations that construe it, define the term “tangible personal property” as used in 35 **ILCS** 105/2 and 35 **ILCS** 105/3. However, in construing statutes related to the state’s tax laws, it is established by the Illinois courts that undefined terms contained in such statutes are given plain and ordinary meaning so as to best effectuate the legislature’s intent. Farrand Coal Co. v. Halpin, 10 Ill. 2nd 507, 510 (1957) (“It is well settled that, in the absence of statutory definitions indicating a different legislative intention, the courts will assume that words have their ordinary and popularly understood meanings”); Illinois Power Co. v. Mahin, 72 Ill. 2d 189, 194 (1978).

The meaning of the term “tangible personal property” has been clearly articulated in numerous tax and other decisions by the Illinois courts. In re Berman’s Estate, 39 Ill. App. 2d 175 (2nd Dist. 1963); Swain Nelson & Sons Co. v. Dept. of Finance, 365 Ill. 401 (1937); Farrand Coal Co., *supra*. A review of these cases indicates that this term is

commonly understood to encompass all material things with intrinsic value except real property such as land, buildings, and attached fixtures, or intangibles such as stocks, bonds, cash, copyrights and licenses. This popularly understood definition of the term “tangible personal property”, which must be presumed the intended meaning of this term when used in 35 ILCS 105/2 and 35 ILCS 105/3, Farrand Coal Co., *supra*, is broad enough to encompass the parts at issue in this case.

Moreover, the Department’s rulings and regulations have consistently interpreted the term “tangible personal property” to include parts as well as finished products. 86 Ill. Admin. Code § 150.305 provides, in part, as follows:

- a) The limitation in the Act to the effect that tangible personal property must be purchased at retail from a retailer excludes, from the Use Tax, the use of tangible personal property produced by the user himself or acquired by the user by way of a gift or in some manner other than by means of purchase.
- b) However, although the user is not taxable on the value of the finished product which he produces himself, such user is taxable on the purchase price of the tangible personal property that he purchases and incorporates into such finished product which he uses in this State, such purchase being a purchase at retail or a purchase for use.

86 Ill. Admin. Code § 150.305²

Moreover, Department Private Letter Ruling ST 92-0509-PLR (September 30, 1992),

which directly addresses the taxability of aircraft kits, states the following:

Please be advised that under 86 Ill. Admin. Code 150.101, the use of or exercise of ownership over property in this state purchased anywhere at retail from a retailer is subject to the Retailers’ Occupation Tax. This applies to items purchased out of state and brought back to Illinois as well as items purchased from mail order companies.

² Administrative regulations have the force of law in Illinois and are construed under the same rules that govern the construction of statutes. Northern Illinois Automobile Wreckers & Rebuilders Association v. Dixon, 75 Ill. 2d 53 (1979), cert. den., 444 U.S. 844 (1979).

Your purchase of the ... aircraft kit was subject to Illinois Use Tax based upon its purchase price at the time the kit was brought into Illinois. Upon registering the completed aircraft in this state, you will need to provide evidence that the Use Tax liability has already been paid.³

Most importantly, the Illinois courts have determined that the Illinois use tax applies to parts that are purchased at retail, as well as finished products. Philco Corp. v. Department of Revenue, 40 Ill. 2nd 312 (1968); American Can Co. v. Department of Revenue, 47 Ill. 2d 531 (1971); Time, Incorporated v. Department of Revenue, 11 Ill. App. 3rd 282 (5th Dist. 1973). In light of these authorities, and for the reasons indicated above, I conclude that the taxpayer's interpretation of the Illinois use tax to apply only to finished products is erroneous.

The taxpayer also claims that tax is not due because he did not purchase the aircraft in controversy from a dealer. Tr. p. 34; Taxpayer's Ex. 8. Since the aircraft was constructed by the taxpayer, it clearly was not purchased at retail. Since a purchase at retail is a prerequisite for the imposition of use tax under 35 ILCS 105/3, the taxpayer could not be taxed on the full value of the completed aircraft. 86 Ill. Admin. Code § 150.305.

However, the taxpayer admits that some of the parts used to assemble the aircraft were purchased from out of state vendors, that no tax was paid on these parts, and that these parts were shipped to, and used in Illinois. Tr. pp. 8, 9, 37, 38. As indicated above, the Illinois use tax is imposed on "the privilege of using in this State tangible personal

³ While Department letter rulings are not binding precedents, they offer insight into the Department's interpretation of governing statutes and regulations, a role which the courts have recognized. Container Corp. of America v. Wagner, 239 Ill. App. 3d 1089, 1096 (1st Dist. 1997); Oscar L. Paris Co. v. Lyons, 8 Ill. 2d 590, 598 (1956).

property purchased at retail from a retailer”. 35 **ILCS** 105/3. Moreover, as has been previously indicated, the term “use” encompasses “the exercise ... of any right or power over tangible personal property incident to the ownership of that property”. 35 **ILCS** 105/2. The activities in which the taxpayer engaged, consisting of the assembly of parts purchased from retailers to construct an ultralight aircraft, clearly constituted a taxable use of tangible personal property, the parts, under the broad definition of the term “use” contained in the Illinois Use Tax Act. 86 Ill. Admin. Code § 150.305. Since these parts were purchased “at retail” the Illinois use tax, measured by the cost of these parts, was applicable in this case. *Id.*

The taxpayer also contends that instructions in the Application for Registration of Federal Aircraft Certificate the taxpayer received indicated that no tax was due because the aircraft was not purchased from a dealer or manufacturer of aircraft. Tr. p. 35. However, the instructions contained in this application clearly stated that tax is due on the purchase of an aircraft in kit form if the kit is used to assemble the aircraft, a fact which the taxpayer acknowledges. Tr. p. 36.

The taxpayer also contends that he is exempt from tax because he “manufactured” the aircraft. Tr. pp. 34, 35. While the taxpayer, who is proceeding *pro se*, does not articulate a legal basis for this position, it would appear that he is attempting to rely upon the “sale for resale” exception contained at section 2 of the Use Tax Act, 35 **ILCS** 105/2, which provides in part as follows:

Use ... does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was

purchased, and does not include the use of such property by its owner for demonstration purposes: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent it is resold as an ingredient of an intentionally produced product or by-product of manufacturing.
35 **ILCS** 105/2

Pursuant to this provision, the use tax does not apply to a component part purchased for incorporation into a finished product that the manufacturer of the product intends to sell. *See* 86 Ill. Admin. Code sec. 130.210 interpreting 35 **ILCS** 120/1 of the Retailers' Occupation Tax Act, which contains an exemption identical to the "sale for resale" exemption at 35 **ILCS** 105/2. This exemption is applicable only where the taxpayer purchases parts for use in the manufacture of a finished product that the taxpayer intends to sell after completion. 35 **ILCS** 105/2. In this case, the taxpayer has admitted that the aircraft he assembled was not intended for sale, but was for the taxpayer's own personal use. Tr. p. 45. Accordingly, the exemption for parts used in manufacturing a finished product for resale noted above, is not applicable in this case.

As indicated above, once the Department presented its prima facie case, it was incumbent upon the taxpayer to rebut it by producing competent evidence identified with his books and records. Copilevitz, *supra*; Central Furniture Mart, *supra*; Vitale, *supra*; A.R. Barnes, *supra*. Since none of the taxpayer's legal contentions has any legal merit, I find that the taxpayer has failed to rebut the prima facie correctness of the Department's determination that use tax was due on the aircraft he assembled. However, the record shows that the tax assessed plus interest, at the time of the Department's wage levy, was in the amount of \$1,023.40, and this was the full amount shown on the wage levy sent the taxpayer's employer. Taxpayer's Ex. 4. The taxpayer has presented documentary evidence that the amount withheld in response to the Department's wage levy exceeded

the amount of tax due pursuant to this levy and that, as a result, the taxpayer overpaid the tax due. Taxpayer's Ex. 4. This documentary evidence is corroborated by the taxpayer's explanation of why the overpayment occurred (Tr. pp. 18, 19)⁴, which I find to be credible, and which has not been rebutted by the Department. Accordingly, I find that the taxpayer is entitled to a refund, to the extent of the tax overpayment that occurred as a result of the Department's wage levy on the taxpayer's wages.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notice of Tentative Denial of Claim be revised to allow the taxpayer a refund in the amount of \$244.64, which is the amount by which the tax withheld from the taxpayer's paychecks pursuant to the Department's wage levy exceeded the amount of use tax stated to be due on the Department's Notice of Levy on Wages, Salary, and Other Income. Taxpayer's Ex. 4. I further recommend that the Notice of Tentative Denial of Claim issued to the taxpayer be finalized as revised, and that this matter be closed.

Ted Sherrod
Administrative Law Judge

Date: April 30, 2002

⁴ The taxpayer testified that the Department failed to notify his employer to stop withholding when the wage levy was satisfied, and admitted that the tax was overpaid. Tr. pp. 18, 19.